

On February 7, 2008, Plaintiff filed a First Amended Complaint. In a March 19, 2008 Order, the Court dismissed the First Amended Complaint because Plaintiff had failed to allege a proper jurisdictional basis for the lawsuit. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the Order.

1 On April 11, 2008, Plaintiff filed a Second Amended Complaint (Doc. #11). The
2 Court will dismiss the Second Amended Complaint without leave to amend.

3 **II. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief against
5 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
7 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
8 be granted, or that seek monetary relief from a defendant who is immune from such relief.
9 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the
10 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint
11 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
12 (*en banc*).

13 **III. Second Amended Complaint**

14 In his two-count Second Amended Complaint, Plaintiff sues Defendants Cactus Police
15 Department and Maricopa County Sheriff Joseph M. Arpaio.

16 In Count One, Plaintiff claims he was “housed as a maximum inmate wrongfully.”
17 He alleges: “On August 30[,] 2005[,] I was arrested on a false charge of theft of means[,] I
18 was then transported to the 4th Ave Jail[,] booked[,] and housed as a maximum inmate[,]
19 where I was then assaulted by other maximum inmates.” In Count Two, Plaintiff contends
20 that he was falsely imprisoned because he “was falsely accused of committing the crime of
21 theft of means by the officers of the Cactus Police Department.” He states that he told the
22 officer that he did not commit the crime and “even gave them the name of the person who
23 did do the crime.” He claims the officers “dismissed [his] confession and still arrested
24 [him].”

25 In his Request for Relief, Plaintiff seeks monetary compensation.

26 **IV. Failure to State a Claim**

27 Section 1983 provides a cause of action against persons acting under color of state law
28 who have violated rights guaranteed by the United States Constitution and federal law. 42

1 U.S.C. § 1983; see also Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir. 1995).
2 Plaintiff has failed to state a claim because he has failed to allege any constitutional or
3 federal-law violations.

4 In addition, to state a valid claim under § 1983, plaintiffs must allege that they
5 suffered a specific injury as a result of specific conduct of a defendant and show an
6 affirmative link between the injury and the conduct of that defendant. See Rizzo v. Goode,
7 423 U.S. 362, 371-72, 377 (1976). To state a claim against a supervisory official, the civil
8 rights complainant must allege that the supervisory official personally participated in the
9 constitutional deprivation or that the supervisory official was aware of widespread abuses
10 and, with deliberate indifference to the inmate's constitutional rights, failed to take action to
11 prevent further misconduct. See Ortez v. Washington County, 88 F.3d 804, 809 (9th Cir.
12 1996); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); King v. Atiyeh, 814 F.2d 565,
13 568 (9th Cir. 1987); see also Monell v. New York City Department of Social Services, 436
14 U.S. 658, 691-92 (1978). There is no *respondeat superior* liability under § 1983, and
15 therefore, a defendant's position as the supervisor of persons who allegedly violated
16 Plaintiff's constitutional rights does not impose liability. Monell, 436 U.S. at 691-92; Taylor,
17 880 F.2d at 1045.

18 Plaintiff does not allege that Defendant Arpaio or Defendant Cactus Police
19 Department personally participated in a constitutional deprivation or that they were aware
20 of widespread abuses and, with deliberate indifference to Plaintiff's constitutional rights,
21 failed to take action to prevent further misconduct, or that they formed policies that resulted
22 in Plaintiff's injuries. Thus, Plaintiff has failed to state a claim against Defendants Arpaio
23 and Cactus Police Department.

24 Because Plaintiff has failed to allege any constitutional or federal-law violations and
25 has failed to state a claim against Defendants Arpaio and Cactus Police Department, the
26 Court will dismiss the Second Amended Complaint.

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V. Dismissal without Leave to Amend

The Court will dismiss Plaintiff's Second Amended Complaint without leave to amend. "Leave to amend need not be given if a complaint, as amended, is subject to dismissal." Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). The Court's discretion to deny leave to amend is particularly broad where Plaintiff has previously been permitted to amend his complaint. Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355 (9th Cir. 1996). Repeated failure to cure deficiencies is one of the factors to be considered in deciding whether justice requires granting leave to amend. Moore, 885 F.2d at 538.


Plaintiff has made three efforts at crafting a viable complaint and appears unable to do so despite specific instructions from the Court. Further opportunities would be futile. Therefore, the Court, in its discretion, will dismiss Plaintiff's Second Amended Complaint without leave to amend.

IT IS ORDERED:

(1) Plaintiff's Second Amended Complaint (Doc. #11) is **dismissed** for failure to state a claim, and the Clerk of Court must enter judgment accordingly.

(2) The Clerk of Court must make an entry on the docket stating that the dismissal for failure to state a claim counts as a "strike" under 28 U.S.C. § 1915(g).

DATED this 24th day of April, 2008.



Mary H. Murgula
United States District Judge